IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.2562 OF 2007

Mr.Udhav Nimba Kothavade — Petitioner
vs.
Mr.Annappa Nagappa Bangi — Respondent

Mr.Sachin Thorat for the petitioner.

Mr.V.B.Tapkir for the respondent.

CORAM : ANOOP V. MOHTA,J.

DATED : 16th August, 2007

P.C.

Heard.

2. The petitioner has filed Civil Suit no.870/2005 for declaration that decree passed in Civil Suit no.849/1988 to declare is null and void and for possession of the suit premises, based upon the foundation of fraud and misrepresentation. Admittedly the said judgement and decree passed in that Suit has been tested in First Appeal as well as in Second Appeal. That decree remained intact. The allegations of fraud and/or misrepresetnation always need detail scrutiny and material. Based on the averments, the effect and operation of Civil Suit no.849/1988 just cannot be stayed. As the petitioner has filed an application for

ad-interim injunction which was allowed by the trial Court but dismissed by the appellate court and therefore the present writ petition.

3. Admittedly, issue no.1 that suit is not maintainable as decided by the appellate court in the impugned order, at this stage of the proceeding, in such application for injunction should not have been decided. That point, even if raised, in the fact and circumstances of the case is a matter of detail scrutiny. Issue no.1 as framed as well as the finding given on that issue is therefore quashed and set aside. The point of maintainability of the suit is kept open which would be tried while deciding the main Suit and/or if case is made out as a preliminary issue.

4. So far as Issue nos.2 and 3 are concerned, in view of the above undisputed position, the observation as given are only prima facie observation. As already noted the allegations of fraud need detailed scrutiny and material and, therefore, the petitioner will be at liberty to take out appropriate plea and defence and/or put appropriate material during the trial in any way this prima facie observations are in no way affect the basic trial based on the allegations of fraud.

5. As already noted, unless the said decree is set

aside, it is final and binding. Therefore, pending the decision in Suit, there is no question of granting any injunction as sought and/or as granted by the trial Court.

6. In view of this, the petition is partly allowed. There shall be no order as to costs.

[ANOOP V. MOHTA,J.]